ATP Integra is aware of. According to information from Qwest's ICON Database, in the 13 collocations served by Integra in Qwest's operating area in the greater Seattle area, there are 1,131,077 business loops available. John Nee's Exhibit D to Appendix C provides information from Dunn & Bradstreet that shows 94% of those business loops are in Integra's segment of the market (small to medium sized businesses). This equates to 1,063,212 loops available to Integra as potential customers through Qwest. The 101 buildings with loops from the ATP with the largest footprint in the Seattle area represent .0095% (95/10,000's of 1%) of all potential Integra customers in the greater Seattle area, customers for which the ILEC has a loop running to each and every one. A company with only 95/10,000's of 1 % of the loops in a geographical area is not competitive with an ILEC that has 100%. Affidavit of Dave Bennett, Appendix D.

The loops from companies claiming to have loops available for wholesale lease share two characteristics: first, the loops are all connected to specific large customers or large buildings, not to the general, broadly dispersed customer base that Integra serves. Second, none of the loops connect with the ILEC central offices where Integra needs collocation. All of the loops connect to the provider's network, which means the loop is very different from an ILEC loop and not a competitive product. This issue is analyzed in more detail in section III.F, supra.

It is also important to understand the characteristics of some of these companies and how they differ from Integra. For example, Click Networks is owned by government: the City of Tacoma, Washington. The loops it has connect to only a small fraction of the total buildings in Tacoma. Table 6 shows the companies that provisioned loops or transport on their way to a bankruptcy filing or some other type of financial restructuring. The companies that did not experience bankruptcy or financial restructuring are owned by ILECs, municipalities, or electric power companies.

Table 5

Name of company with self-provisioned loops	**File for bankruptcy, do financial re-organization, or propped up by a parent company?**
SHAL	No, ILEC owned
XO	Yes, bankruptcy
Clicks Network	No, owned by municipality
GST/Time Warner	Yes, GST bankrupt; TW buys assets
ELI	Yes, ILEC owned, parent propped
MCI	Yes, bankruptcy
Winstar	Yes, bankruptcy
Eventis	No, owned by electric power company
McLeod	Yes, bankruptcy
Astound	No, owned by electric power company
Eschelon	Yes, financial reorganization
Onvoy	No, ILEC owned

With regard to the existence of a robust wholesale market for loops, combining Table 1 with Table 2, and Table 5 with Exhibit A to Appendix D results in one powerful conclusion: there is no wholesale market for loops in Integra's marketplace sufficient to eliminate the obligation of Qwest and Verizon to provide unbundled loops, and there will not be any time soon. Exhibit A to Appendix D shows that only four companies actually competing with Integra in the retail market have provisioned any loops. Not only are those loops significantly limited in that they only go directly to certain large customers, but three of the four companies that provisioned them went bankrupt. The fourth company was saved from bankruptcy by an ILEC parent company but had its public stock de-listed. See Table 5. No wire-line CLEC has or will be over-building the ILEC network and thereby creating a wholesale market for loops. Only Qwest and Verizon have loops to the entire potential Integra customer base. As illustrated above, alternate providers loops reach insignificant numbers of potential Integra customers.

With regard to Integra's ability to self-provision loops, Exhibit A to Appendix D makes clear that CLECs are not generally self-provisioning loops. Table 5 makes clear that out of the 7 non-ILEC companies that have provisioned loops of one kind or another, four filed for bankruptcy. The ones that did not file for bankruptcy are either ILEC owned, municipality owned, or owned by an electric company.

This is very important for policy-makers to understand when doing a self-provisioning analysis: The existence of these loops and the subsequent bankruptcies or financial instability of the companies that provisioned them is the best possible proof that Integra cannot self-provision loops.

F. Loop Impairment Methodology: Economic and Operational barriers to self-provisioning of loops to the Integra Telecom customer base.

The economics relating to the class of customers Integra serves (with an average of 8 access lines) simply do not justify an investment in loops. There are powerful economic barriers to self-provisioning, barriers confirmed by the bankruptcies and debt restructuring of CLECs who have tried.

The ILECs made their loop investments under rate of return regulation, where recovery of the investment plus a rate of return was guaranteed. There is no such guarantee for CLECs. In fact, the evidence shows that virtually every CLEC that made significant investments in fiber also either filed for bankruptcy, or lost staggering amounts of money but was propped up by a parent company. Of course, the relationship between revenue per loop and economic justification for building loops has resulted in most companies that have built loops targeting larger, enterprise customers.

For example, Time-Warner Telecom operates in the Western states by virtue of having bought most of the assets of GST Telecom, Inc. in January 2001out of GST's bankruptcy estate. This was after GST defaulted on $1.2 billion in debt in May, 2000 after building out significant facilities. ELI is now a wholly owned subsidiary of Citizens Communications Company. Citizens was an early investor in ELI at its formation in 1990. ELI was publicly traded from November 1997 until June 2002, at

which time Citizens bought all outstanding shares. The Citizens Form 10-K for 2003 notes that in the third quarter of 2002, Citizens "recognized non-cash pre-tax impairment losses of $656.7 million related to property, plant and equipment in the ELI sector..." ELI had, of course, made significant investments in loops without a customer base. XO Communications filed for bankruptcy after building extensive loop facilities. Winstar and Global Crossing built extensive facilities throughout multiple states before filing for bankruptcy.

The independent survey identified twelve wire-line CLECs competing in Integra's marketplace for Integra's target customer base. Of those twelve, seven have either filed for bankruptcy (6) or restructured debt (1). Two are owned by ILECs. One has announced its intention to withdraw from the market segment served by Integra.

Table 7-Characteristics of CLECs in Integra's market-place

Name of CLEC	Filed for bkrpcy/restructured debt?	Owned by an ILEC?	Self-provision any loops?
Eschelon	Yes, debt restructured	No	No
XO	Yes, bankruptcy	No	Yes
Allegiance	Yes, bankruptcy	No	No
Popp	No	No	No
McLeod	Yes, bankruptcy	No	No
US Link	No	Yes	No
ATG	Yes, bankruptcy	No	No
Sprint	No	Yes	No
ELI	No, propped by ILEC parent	Yes	Yes
Tel West	No	Yes	No
AT&T	No	No	No
Comcast	No	Monopoly	No

These are the harsh economic realities of trying to compete in a marketplace where one of the competitors has a one hundred year head start and monopoly ownership of key network elements.

The FCC's TRO has an excellent record on the inability of competitive carriers to duplicate ILEC loops. See, e.g., paragraphs 226 (mass market loops), 298 and note 856, 325, 326 (DS-1 loops), 311 and 313 (dark fiber loops). The breadth of the record does not seem to be in dispute and Integra reincorporates it herein. Just to be clear, provisioning a loop to a business premise is about more than just the cost of the loop: in addition to the actual loop, investment is also needed in distribution and feeder plant to service that loop.

Essentially, to self-provision loops, a CLEC would have to completely replicate the ILEC network. This is true both because of how the ILEC network is designed (tree and branch configuration) and because Integra does not know the location of its next customer. What Integra does know is that its next customer could be located literally anywhere in the geographic market, because 94% of the businesses in the market are potential Integra customers. Exhibit D to Appendix D, Affidavit of John Nee. In order

to be able to serve a customer in whatever location it might be, Integra would have to replicate the entire ILEC network, completely replicating the same tree and branch configuration. This is why building loops is about much more than just the loop: the loop is just one part of the design. The loop must then be connected to the network, to the nearest central office. The CLEC would literally have to build the same tree and branch design, following the same streets, using the same distribution and feeder plant to the same premises as the ILEC.

Of course, the ILEC built its system with a 100% market share under a rate of return regulatory scheme where it was guaranteed recovery of every dollar spent plus a double-digit profit. CLECs have no such market share and no such guarantee of cost recovery. With an average market share of 10%, and an average customer generating a revenue stream of less than $400 per month, Integra cannot possibly duplicate the ILEC loop, feeder, and distribution network. Affidavit of Dave Bennett, Appendix E.

When Integra examined the demarks for its largest 100 customers, only 3 customers had competitive loops, eight others had one non-ILEC loop. A total of 9 providers had provisioned those loops. Of those 9 providers, five had either filed for bankruptcy or been propped up by a parent company. One is owned by a municipality; two by a consortium of rural ILECs, one by an electric power company; two are data only providers. There is no better proof that self-provisioning of loops is not economically viable in Integra's marketplace.

G. Loop Impairment Methodology: additional economic and operational barriers to purchasing loops from alternate providers.

Starting with what should be obvious but seems to be getting lost: Integra Telecom is not a government agency or a non-profit corporation. Integra Telecom is in business solely to make a profit for its shareholders. This means that Integra is completely motivated to find the best prices on everything it purchases, from office supplies to loops and transport. If Integra is not purchasing loops or transport from alternate providers, you can be assured there is a very good reason, based on economics, pricing, and profit making. The Company does not need to be pushed toward competitive loops and transport. If competitive loops and transport are available at better prices, Integra will purchase them. See Affidavit of Dave Bennett, Appendix E.

1. Virtually none of Integra's customer base has loops from alternate providers.

To date, Integra has not purchased loops from alternate providers. One reason is very simple: as the analysis of Integra's largest 100 business customers proved, virtually none of Integra's customer base has loops from alternate providers.

Even if a customer has a loop from an alternate provider, Integra cannot use the loop because alternate provider loops are completely dissimilar to ILEC loops and therefore are completely different products and do not compete with ILEC loops.

2. **Loops from alternate providers are completely dissimilar to ILEC loops and therefore are an inadequate substitute and non-competitive.**

Loops available from alternate providers are a completely different product than ILEC loops. Alternate provider loops were built for a very different reason and intended to accomplish an entirely different objective than ILEC loops. These differences make for completely dissimilar products that cannot substitute for one another, and result in cost differences that are not competitive with ILEC products. Appendix E, affidavit of Dave Bennett. Some network design background is important to understanding this issue.

Integra Telecom has invested approximately $300 million in switches, infrastructure, and start-up costs. Those investments were made over the last eight years. They were made based on the existing network configuration and where the most ILEC network efficient access points could be obtained. They were made based on the ILEC network configuration: the only network configuration in existence when companies were invited to compete in the Telecom industry. The sole focus was connecting Integra switches with the ILEC central offices in a multiple ring configuration using ILEC transport (typically, dark fiber), and using the ILEC loops to reach retail customers. This is the design the Telecom Act provided for, and this arrangement forms the basis of the Integra business plan and determined the amount of its sunk investment.

For a recently installed loop or transport to be competitive with the ILEC loops and transport, it must be installed and configured in the same manner as the ILEC loops and transport. In other words, it has to be the same product. A product is not competitive with another product if it differs in some significant degree, especially if the differences result in either stranded investment or in significantly increased costs for a potential user.

Non-ILEC loops in Integra Telecom's marketplace are not competitive with ILEC loops because they were never intended to be a product needed by Integra Telecom. Competitive loops are a completely different product with a completely different approach: competitive loops were built to connect a CLEC hub with a large retail customer, or a large office building housing many potential retail customers. The focus was on connecting with large retail customers, not connecting with an ILEC network and using unbundled network elements to make the retail connection. From an operational standpoint, this is a completely different configuration, a completely different product. And the difference between this product and Integra's need to interconnect with the ILEC's network makes the CLEC product unusable in many ways.

First, because of how competitive loops were designed and built, they do not terminate in the same ILEC central offices in which Integra is and needs to be collocated. Integra built its network around termination in ILEC central offices, using a ring configuration. Alternate provider loops do not use a ring configuration

(or any other configuration for that matter) and are not designed to connect central offices. Further, non-ILEC loops are not competitive because they do not connect from the same access points as the ILEC loops, access points around which Integra built its system. These differences mean that multiple, new connections are necessary just to connect Integra to the CLEC loop. These new connections, and the design difference where the CLEC loop connects a retail customer rather than into an ILEC office, also mean that more product is needed for the connection. Because the loop prices are distance sensitive, more product means a higher cost-a significantly higher cost.

Exhibit A to Appendix E contains a diagram depicting a typical ILEC loop design and a typical CLEC loop design. As Dave Bennett explains in his affidavit in Appendix E, the ILEC and CLEC loops designs have significant design differences that result in significant pricing differences, differences that make the CLEC loop significantly more expensive. These differences reflect the significant advantage the monopoly ILEC enjoyed: investment in loops and infrastructure was GUARANTEED recoverable, therefore, the most direct routes were deployed, without regard for system efficiencies. There was no threat that a competitive company would find a more efficient way to design a system and threaten the ILEC's existence. ILEC loops are therefore shorter, more direct connections. CLEC loops were built without guaranteed recovery and had to maximize certain efficiencies that make them non-competitive.

Integra Telecom receives no extra value for purchasing a loop from an alternate supplier that is significantly more expensive than an ILEC loop. A profit making entity will not make this choice. The economics of the marketplace will not support this choice. Since the law does not require this, government should not force this choice upon Integra Telecom.

Not only do operational considerations make clear that a CLEC loop is not similar enough to an ILEC loop to be considered a competitive product, the FCC has recognized the need for alternative products to be significantly similar before being considered competitive. For example, in discussing the availability of alternative Transport sufficient to justify a finding of non-impairment, the FCC required that the alternate transport connect two ILEC central offices. Paragraph 401. The FCC specifically rejected proposals where the alternate transport was only connected at one end of a route. Id. It also rejected proposals that required cobbling together multiple vendor links to complete a route between two incumbent LEC central offices. I.d. The FCC properly recognized that these approaches resulted in increased costs and operational problems for requesting carriers. Id., paragraph 402.

H. Loop Impairment methodology- an analysis of special access as an alternative to ILEC loops.

Special access is a pricing methodology, not a product. The product is the same, whether special access or unbundled network element. The actual facility used to

provide the underlying service is the same. The only difference is how that facility is priced. Special Access is a way of saying it will be priced on monopoly terms.

Unbundled network element is a way of saying it will be priced on competitively neutral, wholesale terms (TELRIC).

To ask whether special access is a substitute for an unbundled network element is *really nonsensical. The product is the same. What you are really asking is* "Is paying monopoly prices for a product an adequate substitute for paying non-monopoly prices?"

For example, you wish to purchase this laptop computer from me for use in your business. You have budgeted $1000 for this purchase, based on the market for laptops over the past few years. Would you prefer to purchase the laptop for $1000 (TELRIC) or $6,000 (special access)? It is the same computer either way; there is no product called special access. Special access is simply a pricing mechanism based on historic, monopoly embedded cost. Affidavit of Dave Bennett, Appendix E.

Integra only purchases loops out of special access when an EEL or other unbundled network element is not available. An EEL is not available as an unbundled network element when it crosses a rate center, a LATA, or a state border. In these instances, Integra must purchase loops out of special access tariffs, and it does. Affidavit of Dave Bennett, Appendix E.

Special access can never be a substitute for ILEC network elements at TELRIC for this simple reason: the business plan for Integra Telecom and all companies similarly situated was based on TELRIC pricing for unbundled network elements. It was based on TELRIC pricing for unbundled network elements because TELRIC was and continues to be the pricing methodology the FCC established as the law of the land. To ask today, eight years later, if a pricing methodology that increases costs by 220 to 600% is an adequate substitute for what has been is nonsensical.

If Integra were forced to move all EEL and loop costs from TELRIC to special access, the economic impact would destroy the company. Today, Integra pays ILECs approximately $500,000 per month for loops and EELs. At special access prices, loops and EEL costs jump to $1.1 million per month, a 220% increase. A 220% increase in the cost of loops and EELs is not an economically adequate substitute for TELRIC prices. Affidavit of Dave Bennett, Appendix E.

Verizon's own bills show that these calculated increases probably understate the real economic impact on Integra of moving to special access.

I. Verizon's claim that companies are buying special access instead of un bundled network elements is very misleading.

Verizon claims that the evidence shows that carriers are purchasing from special access and therefore do not need access to unbundled network elements. This is a very misleading, incomplete statement as to Integra.

During the period 1996, the beginning of competition, until January 2002, Verizon's computer systems were unable to bill for unbundled network elements. When Integra purchased unbundled network elements from Verizon, Verizon sent a bill at special access rates, then discounted the bill by 80% for all UNEs to approximate UNE rates. See bills marked as Exhibit C, Appendix E, Affidavit of Dave Bennett.

To say or imply that companies like Integra were purchasing from special access is misleading at best. Other companies undoubtedly have their own stories. Integra was purchasing unbundled network elements and it took Verizon six years to configure its billing systems so it could bill for UNEs. Integra did not purchase special access; it purchased unbundled network elements from a company that took six years to fix its computer systems.

Verizon's bills are powerful evidence of the devastating economic impact moving to special access rates would have on Integra. Consider that Verizon had to discount special access rates by 80% to approximate UNE rates. This means that a product costing $100 on the special access price list cost only $20 on the UNE cost list. The difference between $100 and $20 is 500%, meaning that special access rates are 500% higher than UNE rates. A 500% increase in the cost of network elements is not a viable economic alternative.

J. Summary of Loop Impairment analysis and Request for FCC finding of Impairment.

99.9999 % of Integra's customers have only the ILEC loop to their premises. Only Qwest and Verizon have provisioned loops to Integra's potential customer base. Non-ILEC companies that provisioned loops suffered insolvency. The economic and operational barriers to Integra self-provisioning loops are extreme at this time, with costs significantly higher than current revenue streams can support. Finally, special access is a pricing methodology that increases Integra's loop and EEL costs by an average of 220% for the very same product. This is not an adequate substitute for unbundled network elements at TELRIC. Therefore, the FCC should find that Integra is impaired within the meaning of section 251(d)(2)(B) of the Telecom for DS-0 and DS-1 loops (including EELS) when serving customers with 96 or fewer access lines at a single location.

IV. An Overview of the Transport (DS-1, DS-3 and dark fiber) Impairment Analysis.

Consistent with the loop impairment analysis, the question Integra answers is "Why hould the FCC find that Integra Telecom is impaired in its ability to serve its customer base without access to ILEC DS-1, DS-3, and dark fiber transport?"

To determine the identity of potential alternate transport providers, Integra established a three-step process: first, Integra either contacted or gathered information on every ATP doing business in its geographic market. Much of this information is subject to Non-disclosure Agreements and can be included in this analysis only in general form. Second, information was gathered about transport from all CLECs known to

be competing with Integra. This information is also subject to Non-disclosure Agreements and can only be provided in general form. Finally, Integra's two primary ILECs, Verizon and Qwest, were contacted to ascertain the identity of any competitive access providers with facilities terminating in their central offices. At the end of these three steps, all possible wholesale providers of alternate transport have been identified, contacted, and analyzed.

Once the identity and offerings of all possible alternate transport providers are known, Integra analyzes the offerings and compares them with ILEC transport (section D). Integra also applies the Transport impairment standards established in the TRO (section E). Next, the economic and operational barriers to self-provisioning transport or using special access transport are analyzed and described (sections F and G). The misleading nature of Verizon's claim that carriers are purchasing from special access rather than UNEs is examined in section H. Lastly, section I explains why DS-3 and dark fiber, not just DS-1, are critical to Integra's success.

A. Step one:

Gathering information and Contacting Alternative Transport Providers Regarding the Availability of Transport for Lease at Wholesale.

Integra employee Bill Littler either contacted or gathered information on each ATP operating within the same market area as Integra. The ATPs were identified based on the independent and internal surveys and the local market knowledge of Integra. His objective was to determine if the ATP owned transport facilities and, if so, which ILEC collocations their facilities connected. The results of his information gathering are contained in Exhibit A to his affidavit, Appendix D.

B. Step two:

Gathering Information and Contacting CLECs Regarding the Availability of Transport for Lease at Wholesale.

Mr. Littler also either contacted or gathered information about each CLEC operating within the same market areas as Integra to determine if any of them owned transport and, if so, which ILEC collocations their facilities connect, and if they are available for lease and under what terms, conditions, and prices. The results of this data gathering are found in Exhibit A to Appendix D, Affidavit of Bill Littler.

Only Qwest and Verizon have transport facilities connecting every central office in which Integra is collocated. Only Qwest and Verizon have transport facilities that allow Integra to serve a small to medium sized business customer base that is widely dispersed throughout the geographic area.

C. Step three:
Contacting Qwest and Verizon Regarding Information on ATPs Whose Facilities Terminate in Their Central Offices.

Mr. Littler also contacted the ILECs in Integra's service territory, Qwest and Verizon. He requested any information they had on the identity of ATPs whose facilities terminate in their central offices. Neither Qwest nor Verizon identified any companies other than those Integra already identified. See Appendix D, Affidavit of Bill Littler.

D. Transport Impairment Analysis: Economic and Operational Barriers to using Transport from Alternate Providers.

This section focuses on analyzing the economic and operational barriers that preclude Integra from using the transport that small numbers of alternate providers claim to have available for wholesale lease on limited routes. The TRO has an extensive record on dark fiber, DS-1, and DS-3 impairment. See, e.g., paragraphs 381-387; 390-393. Integra incorporates this record into its comments.

i. The Design of Alternate Transport is so different from ILEC transport that it cannot be considered a competitive product.

Because most of the operational and economic barriers to Integra utilizing alternate provider transport are directly related to the differences in design between ATP and ILEC transport, it is important to understand the design differences. Much of the analysis of the design of alternate provider loops also applies to alternate providers of transport: the products offered cannot be said to compete with ILEC transport because they are different products, designed for different purposes, resulting in differences that render them economically and operationally unusable. Integra Telecom is motivated to use efficient, economical products. ATP products simply do not meet that standard. Below, Integra shows that in the market where Integra has found the ATP with the most substantial overlap with ILEC UNE transport, Integra would see its direct costs increase significantly to manage less efficient networks of one ATP and one ILEC would be required. This would make this market uneconomic for Integra to serve, thereby establishing impairment. Affidavit of Dave Bennett, Appendix E.

As explained in the loop analysis, Integra's business plan is based on a network configuration that interconnects with the ILEC network at carefully chosen, negotiated points of access. Integra installs its own switch in a market area, uses ILEC dark fiber to create a ring that connects the ILEC central offices with Integra's hub, installs equipment in the ILEC central offices, and

uses the ILEC loops to connect with retail customers. All of Integra's investments in infrastructure have been made with this design in mind. This design is critical to Integra's business plan because its customer base is broadly dispersed throughout each geographic market, with an average of 94% of the businesses being potential Integra customers. To compete with ILEC

transport, ATP transport must provide Integra the same benefits. It must connect ILEC central offices where Integra is collocated with Integra's hub in a ring configuration. Affidavit of Dave Bennett, Appendix E. As discussed earlier, the FCC recognized the importance of this issue in its discussion of Transport in the TRO. See section III. F. 2. of this brief, p.21-22.

The ILEC network design and the ATP network design are two entirely different models, designed for entirely different purposes. The ATP network design was never intended to connect with ILEC central offices so ILEC loops could be used to connect with retail customers. ATPs took an entirely different approach to network design.

ATPs made a deliberate decision to by-pass ILEC central offices and not use ILEC loops to connect with customers. Instead, ATPs built networks directly to the customer-very large customers or locations where it could reasonably be anticipated that large numbers of customers might someday exist, like office buildings and airports. Facilities were run from the ATPs hub directly to large customer premises. A few ILEC central offices might be connected but these connections were all made very strategically, depending entirely upon connecting with a retail customer.

For example, Integra is collocated in 12 Qwest central offices in the Seattle, Redmond, and Tacoma area. An ATP that must remain anonymous because of Non-disclosure Agreements has more overlap with the ILEC transport network in this market than any other ATP in any other market. However, the ATP only has transport connecting 5 of the 12 central offices in which Integra is collocated. Again, this ATP has the broadest footprint of connections to ILEC central offices of all the ATP's surveyed and still only has connections to less than half the central offices in which Integra is collocated. Appendix E, Affidavit of Dave Bennett.

For Integra to utilize the 5 routes indicated above, the cost for additional fiber would be $53,000 more per month, more than a 500% increase. Integra's fiber Optic equipment would not work in this configuration due to the additional 115 miles in length of the fiber route without installation of repeaters. In addition, Integra would still have to utilize ILEC fiber to connect the remaining collocations. Integra has attempted to negotiate a commercial agreement with one of the two ILEC's in our service territory to determine what the cost for dark fiber would be if the unbundling requirement were to be removed but the ILEC has refused to negotiate on any item other than UNE-P. In addition to

the technical challenges and costs associated with significantly increasing the transport mileage, the additional mileage increases the potential for service interruptions and outages. See Affidavit of Dave Bennett, Appendix E.

This transport product is not competitive with ILEC transport because it does not connect ALL the central offices in which Integra is collocated. It cannot replicate the ring configurations that are essential to Integra's network design. Without these rings, Integra has no means to connect all 12 ILEC central offices where Integra serves customers today. Appendix E, Affidavit of Dave Bennett.

Exhibit B to Appendix E, Affidavit of Dave Bennett, illustrates the differences between Integra's ring configuration using ILEC dark fiber and the offering of an anonymous alternate transport provider. Exhibit B has two pages: the first page shows Integra's existing network design and depicts four different ring configurations connecting various Qwest central offices using Qwest dark fiber. This is the design of Integra's network as it exists today. This is the design and configuration that an alternate transport provider must replicate in order to have a competitive product.

The second page of Exhibit B shows the routes the anonymous alternate transport provider has available in the Seattle, Redmond, and Tacoma area. As you can see, the alternate provider routes do not even come close to duplicating any of Integra's four ring configurations. The four ring configurations have a total of approximately 25 routes. Of those 25 routes, the alternate provider has transport on only 7 of them. Connecting with central offices was simply not an important feature of the ATP network design. The operational, maintenance, and cost barriers to having multiple providers of transport on a given ring are described in the following sections.

Integra designed its network to use the ILEC distribution system to connect with retail customers. ATPs designed their networks to BY-PASS ILEC central offices, and connect a large customer directly to the ATPs hub. These two different systems have completely different parts and pieces, and one part or piece is not the same as the other. These two systems cannot compete for loops and transport because the loop and transport products they have are entirely different products. The ILEC network has loops to each and every building in the area. The ATP networks do not.

As an example, another anonymous ATP in the greater Seattle area has less than 200 buildings connected to its network. Integra's target customer base includes 94% of the businesses in this market area. How many buildings house small to medium sized businesses in the Seattle, Tacoma, Renton, Bellevue, Kirkland, Redmond, Bothell, and Everett areas? 15,000? 20,000? More? How can a company with loops to only a minute fraction of the buildings in an area be considered competitive with an ILEC that has loops to

EVERY building? To be competitive, an alternative product must provide the same customer access as the ILEC product. This is especially true when Integra's target business customer is spread through-out a given market, not lumped into one location or a few readily identifiable buildings.

Integra is completely motivated to use ATP transport if indeed it is a more efficient, more economical product than the ILEC's. Integra has some long-haul routes where ATP product is used. Affidavit of Dave Bennett, Appendix E. For long haul routes, connecting one city to another, for example, ATP product is generally the same product as ILEC long-haul transport and can be considered competitive. In the short-haul, connecting ILEC central offices in the same community, ATP products are not competitive.

The design of the ATP short-haul product means that longer amounts of facilities are used, and given that the ATP pricing scheme is distance sensitive, the longer the facility, the more expensive the product. The ATP design has created an expensive product that caused the insolvency of the companies that created it; an expensive product that cannot compete with short-haul ILEC transport. Affidavit of Dave Bennett, Appendix E.

ii. **Analysis of Additional Economic and Operational Barriers resulting from ATP product design differences that preclude Integra from using existing alternate provider transport.**

First, none of the ATP's have transport that allows Integra to access all of its target market. As explained above, 94% of all business addresses are within Integra's target market. Exhibit D to Appendix C, Affidavit of John Nee. This is a very broad, very large, very ubiquitous market that requires a broad, large, ubiquitous transport system. ATP product connects to less than 1 % of Integra's target market.

Second, none of the ATPs claiming to have wholesale transport for lease are connected to all of the ILEC central offices with which Integra is presently connected and must continue to be connected. See Bennett Affidavit, Appendix E. This means that, operationally, ATP transport is an entirely inadequate substitute for ILEC transport, resulting in the "daisy chaining" that the FCC has already properly said must be avoided. See TRO, par. 401.

Third, for those central offices where ATPs have connections, any ATP lit fiber would be significantly more expensive than the ILEC dark fiber Integra currently uses. Lit fiber is more expensive than dark fiber because of the investment the lessor has made in the optronics necessary to light the fiber. Lit ATP fiber is therefore not an adequate economic substitute for ILEC dark fiber as it results in millions of dollars of stranded optronics investment for Integra.

Fourth, for those central offices where ATPs have connections, using ATP dark fiber would cause Integra to also strand the investment it has already made in optronic equipment to light ILEC dark fiber. Integra cannot just remove the optronic equipment from the ILEC dark fiber and put it on the ATP dark fiber. Integra would have to purchase some new, duplicative equipment to light the ATP fiber. The optronic equipment on the ILEC network would

have to stay in place because the network is being used and can't simply be taken out of commission and moved enmass to light up ATP fiber. A portion of Integra's $5 million dollars invested in optronics would be stranded, and additional costs would be incurred to re-configure Integra's entire transport network.

Fifth, for those central offices where ATPs have connections, using ATP lit fiber would cause Integra to incur millions of dollars in stranded costs. Integra currently leases dark fiber from the ILECs. Integra has already invested in excess of $5 million in optronic equipment. If Integra were forced to abandon ILEC dark fiber and move to lit fiber from alternate providers, in addition to the added cost of lit fiber, Integra's investment in optronic equipment would be completely stranded. Affidavit of Dave Bennett, Appendix E.

Sixth, ATPs do not normally provision either DS-1 or DS-3 products. The primary focus of ATP provisioning is dark or lit fiber connecting long-haul locations or large customers with the ATP hub. They only incidentally provision products connecting local central offices or products used for trunking. This is not the focus of their business. As explained in section I, DS-1 and DS-3 products are critical pieces of Integra's network.

Lastly, the operational barriers based on the radically different designs of the ILEC and AT's networks are not just a matter of one engineer's pleasure over another's: these differences translate into significant economic barriers in the form of significantly higher leasing costs, stranded investment, and increased equipment cost.

iii. Additional Operational Barriers to using Transport from Alternate Providers

The TRO has an extensive record on the operational barriers to requiring a CLEC to rely on multiple providers of transport. See, e.g., paragraphs 401 and 402. The FCC focused on route-by-route triggers that "avoid the costs and operational problems associated with cobbling together multiple vendor links to complete a route between two incumbent LEC central offices." TRO par. 401. The use of alternate providers of transport on a route-by-route basis causes the very same operational barriers that the FCC acknowledged needed to be avoided.

Integra has used ILEC dark fiber to deploy a multiple ring configuration network. This means the routes begin at Integra's point of interface with Qwest and go from office A to office B to office C to office D and back to office A. Since each "route" is considered to be between offices, a different carrier could have facilities between different offices and these routes would be considered not impaired. For example, one carrier might have facilities connecting office A to office B; a second carrier connects office B to office C; a third connects C to D.

This would create the exact scenario of "daisy chaining" that the FCC refers to in par. 401 as a scenario that should be avoided because of the significant operational barriers it creates for a CLEC. Affidavit of Dave Bennett, Appendix E. To avoid these FCC acknowledged problems, Integra should not be forced to lease transport from providers that cannot connect an entire ring of the network. As has been shown, any other approach is fragmented and costly.

E. Transport Impairment Analysis: Application of the standards established in the FCC's TRO.

In its TRO, the FCC established standards for determining impairment for DS-1, DS-3, and dark fiber transport. Two different standards were established: One standard determined when it was reasonable to expect a requesting carrier to self-provision transport; the second standard determined when it was reasonable to expect that the requesting carrier had wholesale alternatives available such that there was no impairment without ILEC transport. Both standards are to be applied on a route-by-route basis. Under the USTA II analysis, to find impairment on one route in an area where multiple carriers have deployed transport on other routes within the area requires an explanation of why there is impairment on the one route but not the others.

The standard for self-provisioning is the presence of three or more competing carriers, not affiliated with each other or the incumbent LEC, each having deployed non-incumbent LEC transport facilities along a specific route. See TRO par. 400. As the theory goes, if these three have self-provisioned, then this is proof positive that *all* CLECs can self-provision.

The standard for wholesale alternatives is the existence of two or more alternative transport providers, not affiliated with each other or the incumbent LEC, immediately capable and willing to provide transport at a specific capacity along a given route between incumbent LEC switches or wire centers. TRO par. 400.

1. **Application of the Self-provisioning standard from the TRO.**

After applying the self-provisioning standard, Integra is not aware of any routes where three or more competing carriers have self-provisioned transport/dark fiber. Therefore, Integra is impaired without ILEC DS-1, DS-3 or dark fiber Transport on all of its routes in all markets. See Affidavit of Bill Littler, Appendix D

Having applied the standard, an observation is in order.

Focusing solely on counting the number of companies that have self-provisioned DS-1, DS-3, or dark fiber transport is a faulty method of determining the economic feasibility of self-provisioning. For example, in Integra's marketplace, ELI, MCI, and GST/Time-Warner all claim to have provisioned transport on different routes. Even though ELI, MCI and GST

can all claim to have provisioned transport, it is equally true that all three companies experienced financial insolvency. MCI and GST actually filed for bankruptcy. ELI was propped up by a wealthy ILEC parent company and so avoided an actual bankruptcy filing. However, its public stock was de-listed prior to the parent company taking it private. See Appendix A, Affidavit of Dudley Slater. It makes no sense to base a self-provisioning standard upon the activities and business plans of companies that went insolvent doing the self-provisioning.

The fact that all three companies became insolvent is proof positive of the economic barriers to self-provisioning transport. Instead of establishing no impairment, the fact that these three companies self-provisioned transport on the way to a bankruptcy petition or stock de-listing actually establishes the presence of economic barriers to self-provisioning more powerfully than Integra could ever hope to describe. If Integra were to self-provision transport, it, too would be bankrupt.

2. **Application of the wholesale alternatives standard from the TRO.**

Applying the wholesale alternatives standard to Integra's markets leads to the conclusion that Integra is impaired without ILEC transport. Based on Integra's research and analysis of the network, there are no routes where two or more alternative transport providers are "immediately capable and willing to provide transport at a specific capacity along a given route between incumbent LEC switches or wire centers." See affidavit of Bill Littler, Appendix D.

Once again, having applied the standard to Integra's markets, a couple of observations are in order.

The wholesale standards in the TRO have an initial appeal to them: if two or more carriers are "...immediately capable and willing to provide transport...", a CLEC cannot claim impairment without ILEC transport. It is essential to establish the presence of **multiple providers** who actually offer wholesale products for lease. Absent multiple providers actually willing to lease product, market power becomes a critical issue. If the FCC were to decide that a requesting carrier is not impaired without access to ILEC transport based solely on the presence of one other provider, the FCC is essentially transferring the same market power the ILEC had in 1996 to this other carrier. The other carrier now knows that the CLEC has no choice but to purchase transport from it. If the ILEC is charging special access rates, the other carrier knows it can charge special access rates minus one cent. This is not a competitive environment.

But the standard also fails to consider the issue of pricing, and how the pricing available from an alternate provider may create an economic barrier

to actually purchasing transport from this provider. This is a real issue: the network design used by companies claiming to have alternate transport available results in significantly higher pricing because the pricing is distance sensitive and the design results in significantly longer transport routes than the routes designed and used by the ILECs. This issue is examined in detail in Section D, above, Transport/Dark Fiber Impairment Analysis: Economic and Operational Barriers to Using Transport/Dark Fiber from Alternate providers.

It is also critical that the FCC determine the availability of alternate transport based on a binding obligation on the part of the non-ILEC provider to actually sell transport. For example, a cable provider is not required to make its network available to competitors. Therefore, the presence of a cable provider can never justify a finding of non-impairment because a CLEC forced to turn to the cable provider for transport can just be told "No."

Likewise, neither a wireless nor a satellite provider is required to make its network available to requesting carriers. Before the FCC can justify a finding of non-impairment based on the presence of any inter-modal carrier, it must first ask Congress to amend the Telecom Act of 1996 to require cable, wireless, and satellite providers to make their networks available to requesting carriers. Until that time, the presence of a cable, wireless, or satellite provider has absolutely no impact on the obligation of an ILEC to make network elements available to requesting wire-line carriers. The FCC must not choose winners and losers. Wire-line CLECs need access to the

ILECs network elements. The presence of inter-modal carriers does not change this until the Telecom Act is amended.

F. Transport Impairment Analysis: Economic and Operational Barriers to Self-provisioning by Integra.

The economics of the customer base Integra serves do not justify an investment in transport. Companies that have provisioned transport are entirely in the wholesale business, and owned by parent companies with complimentary businesses. For example, Eventis is owned by Minnesota Power, an electric utility; SHAL is owned by four rural ILECs; Onvoy is owned by sixty-some rural ILECs.

Integra is motivated by profit. Once it becomes profitable for Integra to self-provision transport, it does not need government to push it to do so. As Integra continues to add to its customer base, the time will come to self-provision transport. But that time is not yet here.

The average Integra customer generates less than $400 per month in revenue. Dark fiber transport costs an average of $60,000 per mile to build in rural areas, and up to $350,000 per mile to build in urban areas. Suppose Integra were to self-provision all of the transport it uses in the Seattle area. The Seattle area is a mix of very urban and suburban areas. As a result, consider that the average construction cost per mile of fiber based on the ILEC central offices Integra would need to connect is approximately $271,000. Integra uses approximately 192 miles of transport in Seattle. Total cost to build transport: approximately $52 million. Appendix E, Affidavit of Dave Bennett.

To justify an expenditure of $52 million for transport in Seattle, Integra would have to have the same market conditions that the ILEC had when it built the transport: a 100 percent market share and guaranteed cost recovery plus a profit. Integra has invested over $20 million in capital and four years of time in the Washington market. Based on the current cash from operations from this market, it would take Integra approximately 10 years to recover a further investment of $52 million. Integra would likely never recover the $52 million because spending it in the first place would cause a default under Integra's loan agreement . Appendix A, Affidavit of Dudley Slater.

G. Transport Impairment Analysis: *Economic and Operational Barriers to* using Special Access as a Substitute for ILEC Transport.

Special access is a pricing methodology, not a product. The actual facility used to provide the underlying service is the same for both ILEC special access and ILEC unbundled network elements. The only difference is how that facility is priced.

Special Access is a way of saying it will be priced on monopoly terms. Unbundled network element is a way of saying it will be priced at TELRIC.

The same conclusion with regard to special access as a loop alternative applies to transport.

Integra only purchases transport off special access pricing list when transport is not available as an unbundled network element. Transport is not available as an unbundled network element when it crosses a rate center, a LATA, or a state border. In these instances, Integra must purchase transport off special access price lists, and it does. Affidavit of Dave Bennett, Appendix E.

Special access can never be a substitute for ILEC network elements at TELRIC for this simple reason: the business plan for Integra Telecom and all companies similarly situated was based on TELRIC pricing for unbundled network elements. It was based on TELRIC pricing for unbundled network elements because that is the pricing methodology the FCC established as the law of the land. To ask today, eight years later, if a pricing methodology that increases costs by as much as 600% is an adequate substitute for what has been is nonsensical.

If Integra were forced to move all Transport costs from TELRIC to special access, the economic impact would be approximately $880,000 per month, causing a default under Integra's loan agreement and effectively destroying the company. Today, Integra pays ILECs approximately $140,000 per month for UNE transport. At special access prices, transport costs jump to $880,000 per month, a 600% increase. See Affidavits of Dave Bennett, Appendix E, and Dudley Slater, Appendix A.

B. Verizon's claim that companies are buying special access instead of unbundled network elements is very misleading. (NOTE: Intentional duplication of Section III I as the same argument applies to transport.)

Verizon claims that the evidence shows that carriers are purchasing from special access and therefore do not need access to unbundled network elements. This is a very misleading, incomplete statement as to Integra.

During the period 1996, the beginning of competition, until January 2002, Verizon's computer systems were unable to bill for unbundled network elements. When Integra purchased unbundled network elements from Verizon, Verizon sent a bill for special access, then discounted the bill by 80% for UNEs to approximate UNE rates. See bills marked as Exhibit C, Appendix E, Affidavit of Dave Bennett.

To say or imply that companies like Integra were purchasing from special access is misleading at best. Other companies undoubtedly have their own stories. Integra was purchasing unbundled network elements and it took Verizon six years to configure its billing systems so it could bill for UNEs. Integra did not purchase special access; it purchased unbundled network elements from a company that took six years to fix its computer systems.

Verizon's bills are powerful evidence of the devastating economic impact moving to special access rates would have on Integra. Consider that Verizon had to discount special access rates by 80% to approximate UNE rates. This means that a product costing $100 on the special access price list cost only $20 on the UNE cost list. The difference between $100 and $20 is 500%, meaning that special access rates are 500% higher than UNE rates. A 500% increase in the cost of network elements is not a viable economic alternative.

C. DS-1, DS-3, and Dark Fiber Transport are all critical to Integra's success.

Integra is impaired without access to DS1, DS-3 and dark fiber transport.

Integra's business plan and product pricing was built around access to DS-1, DS-3 and dark fiber transport. Today, dark fiber is the primary method of connecting central offices in which Integra is collocated with Qwest and Verizon. Some DS-1s and DS-3s are used when dark fiber is not available, and Integra has made extensive use of DS-3s. DS-1s are used extensively as trunking to connect tandems and end offices or to extend facilities to serve customers in an ILEC central office where Integra is not physically collocated. See affidavit of Dave Bennett, Appendix E.

The differences in pricing between DS-1s, DS-3s, and dark fiber are what have the potential to devastate Integra. Before analyzing the pricing differences, it is important to understand how the different products relate to each other.

Table 8 –Transport products: same product, different volumes

Type of product	Equals this many DS-0s	Equals this many DS-1s	Equals this many DS-3s	Copper or Fiber?
DS-0	1	-	-	Copper
DS-1	24	1	-	Copper
DS-3	672 (24x28)	28	1	Copper
OC-48 (Lit dark fiber)	32,256	1,344	48	Fiber

A DS-0 is the smallest capacity product. This is a single copper pair, or its equivalent, the type typically used to serve a small business. A DS-1 is next on the hierarchy, consisting of 24 DS-0s. DS-3 is next, consisting of 28 DS-1s, or 672 DS-0s (24x28). These are all the very same products; just different volumes or quantities of the same product.

Dark fiber is unlit fiber. When dark fiber is lit, it is referenced with the letters "OC". Depending upon the type of optronic equipment used to light it, dark fiber can be lit at a capacity along a spectrum from OC-3 to OC-12 to OC-48, or even OC-192. The alphabetical reference of OC indicates optical; the numeric reference of 3 or 12 or 48 or 192 indicates the number of DS-3s. So, for example, OC-48 has the same capacity as 48 DS-3s, or 1,344 DS-1s (48x28).

Table 9 -Pricing for different volumes of Transport products

Type of product	Qwest monthly UNE price in Oregon	Cost of purchasing the same volume as DS-1s	Difference in cost between higher volume product and DS-1	Percentage increase in cost for purchasing CLEC
DS-1	$42	-	-	-
DS-3	$333	$1,176 (28 x $42)	$843 per month	253%
OC-48	$544 ($68 x 8)	$56,448 (1,344 x $42)	$55,904 per month	9,872%

Why does Integra use one product rather than another? This is where capacity and pricing come together. A certain amount of capacity is needed on a given route. Remember, Integra's potential customer base is very broadly dispersed. The average DS-1 in Oregon from Qwest costs about $42.[3] The average DS-3 costs about $333 (assumes $253 plus a mileage charge for an 8 mile route, which adds about $80). This means that it is the most cost effective for Integra to use up to 7 DS-1s on a route, rather than purchase a DS-3 (7 DS-1s times $42 equals $294). Once the capacity need increases to where 8 DS-1s are needed, it makes economic sense for Integra to purchase a DS-3 (8 DS-1s times $42 equals $336 vs. $333 for a DS-3).

Now, a DS-3 is equal to 28 DS-1s. So, once it makes economic sense for Integra to go to a DS-3, it now has the capacity of 28 DS-1s.

If the FCC were to take DS-3s away from Integra, leaving it only with DS-1s, the economic impact is devastating.

Continuing with the example: for $333, Integra gets a DS-3, with the capacity of 28 DS-1s. The cost of 28 DS-1s, if purchased as DS-1s rather than one DS-3, is approximately 28 x $42 or $1,176. This number is almost 400% higher than purchasing a DS-3: $333 vs. $1,176. This impact would be economically devastating to Integra.

This same type of example plays out with higher capacity products. Take a fiber product for example. Let's use a dark fiber product that Integra has lit with its own optronic equipment at an OC-48 capacity. The cost of an 8 mile piece of Qwest dark fiber in Oregon is approximately $544 per month ($68 per mile x 8 miles). Remember that an OC-48 is 48 DS-3s, or 1,344 DS-1s (48 x 28).

If the FCC were to take away dark fiber and leave only DS-1 transport, instead of paying $544 for an OC-48, Integra would pay $42 x 1,344 DS-1s for a total of $56,448. To be clear: without dark fiber, what costs Integra $544 per month today would cost $56,448 per month, a difference of $55,904 per month. This rate impact is significantly more devastating than even special access rates! No business plan can absorb this impact and CLEC wire-line competition will end.

[3] None of the numbers in the examples include non-recurring charges. Actual costs are therefore higher than those depicted but the exclusion facilitates a fair comparison.

The underlying product is identical, whether DS-1 or DS-3. What the ILECs really seek to remove is the volume discount that is entirely economically appropriate and contemplated in the 96 Act that requires the ILEC to open its network, providing for fair competition by making these monopoly scale economics available to new competitors. There is no greater wholesale market for DS-3 or dark fiber connecting central offices than for DS-1. Therefore, there is no policy basis for allowing ILECs to refuse to make DS-3 and dark fiber products available.

This is why it is critical that DS-1, DS-3 and dark fiber transport continue to be made available. There are no competitive alternatives to ILEC transport and the economic impact of eliminating DS-3 or dark fiber would end wire-line CLEC competition. See Affidavit of Dave Bennett, Appendix E for these examples.

J. Summary of Transport Impairment Analysis and Request for an FCC Finding of Impairment.

Integra Telecom requests an FCC finding that Integra is impaired within the meaning of section 251(d)(2)(B) of the 1996 Telecom Act without access to ILEC transport and dark fiber in the geographic markets described in Appendix B, when serving customers with 96 or fewer access lines at one location. Only three of the 20 CLECs identified as competing with Integra have self-provisioned transport. All three of those companies have experienced bankruptcy or near bankruptcy, and the product they installed is not the same product as ILEC transport, the product around which

Integra built its business plan. Only Qwest and Verizon have transport facilities reaching the potential Integra customer base. Forcing Integra to purchase alternate

provider transport would cause Integra to strand millions of dollars invested in equipment, would give those providers complete market power, and would cause the "daisy chaining" that the FCC has already said must be avoided. Special access is a monopoly-pricing scheme, not an alternative product and certainly not an alternative to unbundled network elements. DS-3 and dark fiber transport are critical to competitors wishing to serve customers with fewer than 96 access lines. Eliminating any of these products eliminates wire-line competition for this class of customers. Integra is motivated to self-provision when it is profitable to do so. Today, however, Integra is impaired without ILEC transport.

V. Pricing Standards for Network Elements Obtained Under Section 271 of theTelecom Act of 1996.

A. Bell Operating Companies ("BOCs") have an Independent Obligation to Provide Access to Loops and Transport under Section 271.

It is now well established that BOCs have an independent obligation to make loops, transport, switching, and call-related databases available as unbundled network elements. See 1996 Telecom Act, sections 271(c)(2)(B)(iv)-(vi),(x); USTA II, p.52; TRO, paragraphs 653-655. Unlike under section 251, a showing of impairment is not

required of purchasers of section 271 elements. Assuming the BOC has not relinquished its inter-exchange carrier authority, it is obligated to provide these unbundled network elements upon request. The real question is, of course, at what price.

B. The Pricing of Section 271 Elements Must Take into Account the Congressional Intent to Open the Telecom Markets to Competition.

The FCC has decided that sections 201 and 202 of the Communications Act of 1934 govern the pricing of section 271 unbundled network elements. See, e.g., TRO, paragraph 662. The FCC goes on to say that the "just and reasonable" standard may be satisfied if, for example, a BOC is treating two CLECs the same. See TRO, paragraph 664. Unfortunately, this analysis completely fails to consider that the context in which telecom products are priced is completely different today than the context in which sections 201 and 202 of the Communications Act of 1934 were drafted and interpreted. This failure has lead to a reversible error of law.

The Communications Act of 1934 was never intended to be used to price wholesale network elements in a competitive environment. It was largely intended and used to price inter-exchange service, first in a monopoly environment, then in an oligopoly environment, and then not at all with the de-tariffing of inter-exchange services. If the FCC is going to use this same tool to price 271 network elements, it cannot use the tool as it has historically been used. Times have changed; the context is entirely different; the task to be accomplished is entirely different.

Because the Communications Act of 1934 was never intended to be used to price wholesale network elements in a competitive environment, pricing under the 1934 Act cannot be done in a vacuum. It must take into account the 1996 Telecom Act and the advent of competition, and the wholesale, competitive relationship that exists between BOCs and CLECs. "Just and reasonable" must take into account that a BOC is setting prices for a competitor, setting prices for the same network elements that the BOC uses at a specific cost in its own business; setting costs for network elements that were largely paid for by captive ratepayers in a monopoly environment.

In other words, even if the pricing standard of 201 and 202 are the applicable standards for pricing 271 network elements, the competitive relationship between the price setter and the price payor must be accounted for. And, in the 271 setting in particular, BOC pricing commitments made in order to induce state commissions and the FCC to approve entry into the long distance market cannot be forgotten or given away.

i. The Same Prices That Were in Place When the BOC Received 271 Approval Should be Charged for Network Elements Today.

BOCs were given the inter-exchange carrier authority carrot by virtue of compliance with section 271 of the Telecom Act. That compliance

included compliance with certain pricing methodologies. Prices for unbundled network elements had to be reasonable and current (i.e. recently examined by state commissions). More importantly, the methodology for doing the pricing had to be TELRIC.

Compliance with TELRIC pricing was a condition of BOC entry into long distance. TELRIC was a mandated pricing methodology, absolutely required as a condition of BOC long distance entry, an FCC policy decision upheld by the United States Supreme Court, and relied upon by State Commissions and the FCC in determining that BOC markets were open to competitors. Any BOC that would have used a pricing methodology other than TELRIC would have been denied entry. This is indisputable, and one need only look at the FCC's analysis of some BOC 271 approval requests to confirm it.

"Just and reasonable" means the FCC does not allow BOCs to obtain the benefits of being in the long distance market but avoid the commitments that allowed the FCC to conclude that markets were open to competition. This would be an absurd result, and the law does not sanction absurd results.

The rates that were in place when a BOC received 271 approval are the rates that should be used to price 271 elements. These are the rates upon which BOC entry into the long distance market was based. Unless BOCs are going to give up the long distance market, they should be required to maintain the wholesale pricing that got them there.

Using the actual prices for network elements in effect at the time of 271 approval has a very solid policy basis: Consider the first section of these comments having to do with impairment. CLECs like Integra Telecom are required to make this filing with the FCC, shouldering the burden of proving impairment without ILEC unbundled network elements. Presumably, CLECs are saddled with this burden of proof because the BOCs have convinced the Courts that there are so many loop and transport providers in the marketplace that CLECs are no longer impaired without access to BOC loops and transport.

With all this presumed competition for loops and transport today, prices from the time of a given BOC's 271 approval that occurred two, three, or four years ago should be much higher than today's prices. Using unbundled network element prices from the time of a BOC's 271 approval should therefore make a BOC happy. Multiple suppliers of network elements competing with each other for sales results in decreasing prices. If, as the BOCs contend, there are so

many providers of network elements out there today, prices from a 271 approval that occurred two or three years ago should be higher than the prices BOCs received today for these "competitive" elements. Also, if, as the BOCs contend, there are so many providers of network elements out there, prices for network elements should not increase 600% to special access rates under 201 and 202.

ii. **At the Very Least, the Same Pricing Methodology That was in Place When the BOC Received 271 Approval Should be Used to Price Network Elements Today: TELRIC.**

Even if the actual pricing numbers are not used, the pricing methodology that led to BOC long distance approval should be used. That methodology was TELRIC. If the TELRIC commitment is eliminated, a BOC's inter-exchange authority should also be eliminated. The conditions of entry go hand-in-hand with the benefit of entry. The FCC should not allow the BOCs to have the benefit of long distance entry without the commitment to competition enabled by TELRIC. This is bad policy and bad law.

C. The FCC Should Create a Class Under Section 201(b) of the Communications Act of 1934 Entitled "The CLEC" Class.

Setting 271 aside and focusing on sections 201 and 202:

Section 201 (b) requires charges, practices, and regulations to be "just and

reasonable." However, different charges may be made for different classes of communications, e.g., day, night, commercial, press, or Government. The FCC may define such classes as are "just and reasonable."

Integra Telecom requests that the FCC define a class of communications called "Competitive Local Exchange Carriers" ("CLECs"). Creating this class is just and reasonable because it is important for the FCC to acknowledge the new status of BOCs and their customers under 201 and 202. Creating the CLEC class acknowledges the unique, wholesale, competitive status of a group of customers not previously governed by wholesale pricing standards under this section.

D. BOC Charges and Practices for the CLEC Class Cannot be Unjust, Unreasonable, or Discriminatory Pursuant to Section 202 of the Communications Act of 1934.

Section 202 provides "...it shall be unlawful for any common carrier to make any unjust or unreasonable discrimination in charges, practices, regulations, facilities,